



# California Regional Water Quality Control Board

## San Diego Region

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Secretary for  
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Protection

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October 23, 2002

### NOTICE OF PUBLIC HEARING

**Complaint No. R9-2002-0331 for Administrative Assessment of Civil Liability  
For Violation of Water Code Section 13267, against the City of San Diego,  
AMEC Earth and Environmental, and Tri-County Drilling, Inc.,  
For Failure to Submit a Preliminary Site Conceptual Model and  
a Workplan to Conduct a Soil and Groundwater Investigation,  
Pursuant to California Water Code Section 13267**

#### PURPOSE OF THE PUBLIC HEARING

The purpose of the public hearing is to provide designated parties and interested persons with an opportunity to present factual evidence which will assist the California Regional Water Quality Control Board, San Diego Region (Regional Board) in determining the validity of the allegations contained in Complaint No. R9-2002-0331. This complaint proposes the administrative assessment of civil liability in the amount of \$128,000, jointly and severally, against the City of San Diego (City), AMEC Earth and Environmental (AMEC), and Tri-County Drilling, Inc. (Tri-County), for failure to submit a preliminary site conceptual model and a workplan to conduct a soil and groundwater investigation, as required by an investigative order issued on November 13, 2001, by the Regional Board pursuant to section 13267 of the Water Code.

The record for this matter will include all Regional Board files, exhibits, and agenda material pertaining to this matter.

#### BACKGROUND

An underground gasoline pipeline was ruptured during the drilling of a soil boring by Tri-County on February 1, 2000. The soil boring was part of a geotechnical investigation conducted along Belt Street by AMEC for the City. Tri-County was a contractor to AMEC, the geotechnical consultant hired by the City to conduct the investigation. The pipeline is an eight-inch diameter, steel, underground, fuel pipeline owned by Chevron Products Co. (Chevron). It contained unleaded gasoline at the time of the rupture. The pipeline is used to transport fuel between the upper and lower Chevron Bulk Fuel Terminals. The rupture of the pipeline caused an immediate release of approximately 2,730 gallons of unleaded gasoline into soil and groundwater.

#### ***California Environmental Protection Agency***

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The Regional Board found that Tri-County, AMEC, and the City were suspected of causing or permitting the discharge. Pursuant to Water Code section 13267, the Regional Board directed these parties to undertake an investigation of the discharge by preparing a preliminary site conceptual model and workplan to conduct a soil and groundwater investigation to delineate the extent of soil and groundwater contamination at the site and to determine possible impacts to the water quality of San Diego Bay, to human health and to the environment. The reports were due to the Regional Board by January 25, 2002.

At the request of the parties, on January 4, 2002, the Regional Board agreed to hold a hearing to review its findings that the parties caused or permitted the discharge of waste to waters of the State, and that the burden of providing the required reports bore a reasonable relationship to the need for the reports and benefits of the reports.

As a result of the hearing the Regional Board issued Order No. R9-2002-0083 on April 3, 2002, affirming its findings that:

1. The City, AMEC, and Tri-County are suspected of having caused or permitted the discharge of petroleum fuel waste within the San Diego region;
2. The workplan for investigation and preliminary site conceptual model are necessary to ensure that the investigation will provide the information needed by the Regional Board to assess the threat of pollution associated with the discharge and to assist the Regional Board in overseeing the investigation; and
3. The burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits of the reports because the costs are relatively minor and are justified by the need to assess whether or not the discharge poses a risk to the beneficial uses of San Diego Bay, human health, and the environment.

Order No. R9-2002-0083 also ordered the City, AMEC, and Tri-County to prepare and submit a preliminary site conceptual model and workplan for a soil and groundwater investigation as directed by the Regional Board in its letter dated November 13, 2001. The City, AMEC, and Tri-County did not request reconsideration of Order No. R9-2002-0083, nor did they petition the State Water Resources Control Board for review pursuant to section 13320 of the Water Code.

As of this date, a preliminary site conceptual model and a workplan to conduct a soil and groundwater investigation have not been submitted to the Regional Board as directed, pursuant to Water Code section 13267, in a letter dated November 13, 2001, and affirmed in an order dated April 3, 2002.



**KEY ISSUES**

1. Did dischargers fail to satisfy the requirements of the investigative order by failing to submit an adequate preliminary site conceptual model as required by investigative matter in this issue?
2. Did dischargers fail to satisfy the requirements of the investigative order by failing to submit an adequate workplan as required by investigative matter in this issue?
3. Should liability be assessed for these two violations?
4. What amount of liability is appropriate for these two violations?

**HEARING PROCEDURES**

A formal public hearing on this matter before the California Regional Water Quality Control Board, San Diego Region (Regional Board) has been scheduled for the Regional Board meeting on December 11, 2002, in the Board Room at 9174 Sky Park Court, Suite 100, San Diego, California. Testimony at the hearing will be limited to the key issues.

Designated parties must submit a list of witnesses and copies of evidence to be presented at the hearing prior to the hearing date. During the formal hearing, witnesses will be allowed a limited time to orally summarize the pertinent points of their written testimony. Designated parties must submit 20 copies of the following information to the Regional Board:

- The name of each proposed witness and the order in which witnesses will be called;
- A description/summary of what each witness' testimony is intended to prove;
- Identification of material factual issues in the dispute;
- Written testimony of each witness; and
- Other documents intended to be introduced as evidence.

The Regional Board must receive this information no later than 5:00 P.M. on November 20, 2002. Additionally, each person listed on the enclosed "Designated Parties List" must receive a copy of this information no later than 5:00 P.M. on Wednesday, November 20, 2002. Pursuant to Title 23, California Code of Regulations section 648.2, the Regional Board may refuse to admit written testimony into evidence if it is not submitted to the Regional Board in a timely manner, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would create an unreasonable hardship.

*When a hearing is conducted using formal procedures, participants will be determined to be either "designated parties" or other "interested persons". Only designated parties will have the*



*right to cross-examine witnesses. Interested persons do not have a right to cross-examination, but may ask the Regional Board to clarify testimony.*

Designated parties automatically include the Regional Board and any person to whom an order is addressed (i.e., the Discharger(s)). All other persons wishing to testify or provide comments at a formal hearing are interested persons. An interested person may request status as a designated party for purposes of the formal hearing. The Regional Board must receive a request no later than 5:00 P.M. on Friday, November 15, 2002. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the possible actions of the Regional Board.

For any hearing (formal or informal) the Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested persons will generally be given 3 minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited due to the number of persons wishing to speak on an item, or the number of items on the Board's agenda, or for other reasons.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for hearings generally will be as follows, unless modified by the Regional Board Chair:

- Testimony\* of Regional Board staff
- Testimony\* of discharger
- Testimony\* of other designated parties
- Testimony\* of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close public hearing
- Deliberation and voting by Regional Board

\*includes cross examination at the discretion of the Chair

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony. The Regional Board may



choose to deliberate about the evidence presented in closed session. After considering evidence, testimony, and comments, the Regional Board may choose to adopt an order regarding a proposed agenda item.

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John H. Robertus  
Executive Officer  
California Regional Water Quality Control Board  
San Diego Region

